



PUBLIC NOTICE

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DA 02-895

Released: April 17, 2002

WIRELESS TELECOMMUNICATIONS BUREAU CONDITIONS GRANT OF ASSIGNMENTS OF LICENSES FROM SUBSIDIARIES OF WINSTAR COMMUNICATIONS, CHAPTER VII DEBTORS, TO WINSTAR SPECTRUM, LLC, A SUBSIDIARY OF IDT CORPORATION

On January 10, 2002, Winstar Wireless Fiber Corp. (Debtor in Possession), Winstar LMDS, LLC (Debtor in Possession), WWI License Holding, Inc. (Debtor in Possession), and Winstar Puerto Rico, Inc. (Debtor in Possession) (collectively, "the Winstar Licensees") filed assignment of license applications pursuant to Section 310(d) of the Communications Act of 1934, as amended ("the Act"), 47 U.S.C. § 310(d). In the applications, Winstar requests Federal Communications Commission ("Commission") approval to assign Commission licenses held by them to provide domestic telecommunications services pursuant to Part 101 of the Commission's rules to Winstar Spectrum, LLC, a newly formed wholly owned subsidiary of IDT Corporation ("IDT").¹ These applications, which in aggregate cover 1,768 Part 101 licenses,² were placed on Public Notice as accepted for filing on January 16, 2002.³ No petitions to deny or comments were filed regarding the applications.

Section 310(d) of the Act requires that the Commission consider the qualifications of proposed license assignees as if the assignees were applying for the license directly under Section 308 of the Act.⁴

¹ See Application of Winstar Wireless Fiber Corp. (Debtor in Possession), FCC File No. 0000723317; Application of Winstar LMDS, LLC (Debtor in Possession), FCC File No. 0000721683; Application of WWI License Holding, Inc. (Debtor in Possession), FCC File No. 0000721675; and Application of Winstar Puerto Rico, Inc., FCC File No. 0000721625. During the pendency of these applications, the Winstar bankruptcy was converted from a Chapter XI proceeding to a Chapter VII liquidation. The requisite *pro forma* assignment applications to reflect the conversion were timely filed and approved, see FCC File Nos. 0000760156 (Winstar Wireless Fiber Corp.), 0000760178 (Winstar LMDS, LLC) and 0000760127 (WWI License Holding, Inc.), and the applications now before us were duly amended to reflect that each of the assignors was now a Chapter VII debtor rather than a debtor in possession.

² The applications include 615 site-based common carrier point-to-point microwave licenses, 931 39 GHz Economic Area licenses, 205 39 GHz Rectangular Service Area licenses, 16 Local Multipoint Distribution Service ("LMDS") licenses, and one Digital Electronic Message Service License.

³ See Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Accepted for Filing, *Public Notice*, Report No. 1077 at 3-4, 20-21 (January 16, 2002).

⁴ 47 U.S.C. § 308. Section 308 requires that applicants for Commission licenses set forth such facts as the Commission may require as to citizenship, character, financial, technical, and other qualifications. In general, when evaluating assignments under Section 310(d) of the Act, we do not reevaluate the qualifications of the assignor. See, e.g., Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG,

We note that no party has challenged the basic qualifications of Winstar Spectrum, LLC or IDT, and our independent review finds no evidence to suggest that Winstar Spectrum, LLC or IDT lacks the financial, technical, legal, or other basic qualifications necessary to qualify to hold the Part 101 licenses covered by these applications. We further note that no party has filed a petition to deny or informal objection against the proposed assignments.

These assignment applications were accompanied by requests for waivers of several of the Commission's Rules. Those waiver requests are addressed in separate orders issued today, and our consent to the assignment applications is subject to the terms and conditions of those orders.⁵ Specifically, we condition our consent to the assignment applications on, within thirty days, Winstar filing construction notifications pursuant to 47 C.F.R. § 1.946(d) concerning each call sign listed in Appendix B of the Winstar Construction Order.

Similarly, the application for consent to assign 15 LMDS licenses (FCC Call Signs WPOH628, WPOH635, WPOH626, WPOH629, WPOH623, WPOH636, WPOH627, WPOH631, WPOH632, WPOH630, WPOH634, WPOH625, WPOH633, WPOH624, and WPOH637) from Winstar LMDS, LLC (Chapter 7 Debtor) to Winstar Spectrum, LLC is granted, subject to the full payment of any required unjust enrichment payments on or before the consummation date. *See* 47 C.F.R. § 1.2111(d).

Pursuant to Section 310(d) of the Act,⁶ and Section 0.331 of the Commission's rules,⁷ the Wireless Telecommunications Bureau approves the referenced applications requesting Commission consent to assign the Part 101 licenses currently held by the Winstar Licensees to Winstar Spectrum, LLC, subject to the conditions set forth above. The Bureau finds, upon consideration of the record, that the proposed assignments, as conditioned, will serve the public interest, convenience, and necessity. Additionally, on our own motion, we waive Section 101.55 of our Rules⁸ to permit the assignment to Winstar Spectrum, LLC of the unconstructed LMDS and 39 GHz licenses held by the Winstar Licensees.⁹

Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and for Declaratory Ruling Pursuant to Section 310 of the Communications Act, *Memorandum Opinion and Order*, 16 FCC Rcd 9779, 9790 ¶ 19 (2001).

⁵ See Winstar Wireless Fiber Corp. and New Winstar Spectrum, LLC Request for Waiver of Sections 101.55(a), 101.63(a), 101.65(a) and (b), and 101.305(a) and (d) of the Commission's Rules, *Order*, DA 02-894 (rel. April 17, 2002); Winstar LMDS, LLC (Chapter 7 Debtor) Request for Waiver of 1.2111(d) and 101.1107(e) of the Commission's Rules Regarding Unjust Enrichment Payment for Fifteen LMDS Licenses Purchased in Auction No. 17; Application for Assignment of Licenses and Authorizations from Winstar LMDS, LLC (Chapter 7 Debtor) to Winstar Spectrum, LLC File No. 0000721683, *Order*, DA 02-887 (rel. April 17, 2002).

⁶ 47 U.S.C. § 310(d).

⁷ 47 C.F.R. § 0.331.

⁸ 47 C.F.R. § 101.55.

⁹ In 1997, the Commission amended Section 101.55 to specifically exempt from its anti-trafficking prohibition those Part 101 licenses acquired through an auction. Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Report and Order and Second Notice of Proposed Rule Making*, 12 FCC Rcd 18600, 18688 (1997). As so amended, the rule specified that "[l]icenses *not authorized pursuant to competitive bidding procedures* may not be assigned or transferred prior to completion of the construction of the facility." 47 C.F.R. § 101.55(a) (1998) (emphasis added). The language exempting auctioned licenses was removed from the rule inadvertently in 2000. Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, *Memorandum Opinion and Order and Notice of Proposed Rule Making*, 15 FCC Rcd 3129, 3186-87 (2000). We continue to believe that application of Section 101.55 to licenses acquired through competitive bidding is not warranted, and accordingly waive the rule here

Pursuant to Section 1.103 of the Commission's Rules,¹⁰ the conditional consent granted herein is effective upon release of this Public Notice. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331, and pursuant to Section 310(d) of the Act, 47 U.S.C. § 310(d) and Section 1.948 of the Commission's Rules, 47 C.F.R. § 1.948.

For further information, contact Jeffrey Tobias, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, at (202) 418-1617.

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insofar as it would otherwise prohibit the assignment to Winstar Spectrum, LLC of unconstructed LMDS and 39 GHz licenses initially authorized pursuant to competitive bidding procedures.

¹⁰ 47 C.F.R. § 1.103.